IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

**JUDGMENT**

Smt.Rambha & ors. Vs. Usman Khan & ors.

S.B.CIVIL MISC. APPEAL NO.352/1994

Against the award dated 29.01.1994 made by the Motor Accidents Claims Tribunal, Jalore in MAC Case No.29/1989

Date of Judgment : 13th September 2006

PRESENT

**HON'BLE MR.JUSTICE DINESH MAHESHWARI**

Mr.S. K. Sankhla for the appellants
Mr.Jagdish Vyas for the respondent No. 3

**BY THE COURT:**

This is claimants' appeal preferred against the award dated 29.01.1994 made by the Motor Accidents Claims Tribunal, Jalore in MAC Case No.29/1989 seeking enhancement over the amount of Rs.1,90,000/- awarded by the Tribunal as compensation on account of accidental death of Shri Punma Ram Meghwal, about 32 years in age, working as teacher in a primary school with Panchayat Samiti, Raniwada. Only the question of quantum of compensation being involved in this appeal, a brief reference to the background facts would suffice.

The claimant-appellants, wife, children and mother of the victim, made the application seeking compensation with the submissions that on 29.05.1988, at Chitrodi (Jalore) the deceased Punma Ram with his wife Rambha boarded a bus bearing registration No. RNQ 486 going from Bhinmal to Jaswantpura via Gajipura-Chitrodi-Rajpura-Sundhamata for their journey to Sundhamata. At Rajpura the deceased Punma Ram after making a request to the driver and conductor took to the ladder of the bus in order to check his luggage at the roof-top; while he was in the process of climbing up, the driver started and took the bus ahead; Punma Ram was thrown down and fell unconscious, sustaining serious injuries; he was taken to Jaswantpura and then to Bhinmal Hospital; he was referred to Jalore and then to Jodhpur; but he remained unconscious and ultimately died on 06.06.1988 due to the head injury sustained in the mishap. Stating the liability of the non-applicants, driver, owner and insurer of the bus to compensate for the loss occasioned to the claimants because of untimely accidental death of Punma Ram, it was submitted that the deceased was 32 years in age and was working as a teacher with Panchayat Samiti, Raniwada earning salary income of Rs.1,394/- per month. It was submitted that the deceased had substantial longevity of life available with him and he was the only earning member of the family and the

claimants were dependent upon him. Stating various losses the claimants made a claim of Rs.4,00,000/- as compensation. The claim application was filed on 15.05.1989 and the claimants prayed for condonation of delay with reference to their illiteracy and poverty stricken traumatic condition.

The non-applicant No. 3, insurer of the offending vehicle contested with the submissions that the deceased sustained injuries for his own fault in trying to climb the ladder of the moving bus; that the liability of the insurer was limited up to Rs. 15,000/- only; and that there was no cause to condone the delay in filing the claim application. The non-applicants Nos. 1 & 2, driver and owner of the bus also contested with the submissions that there was no cause to condone the delay in filing the claim application and averred in relation to the incident that though it was over-crowded, yet the deceased and his wife attempted to board the bus; the wife of the deceased took a seat inside but the deceased attempted to take to the roof of the bus without the knowledge of the driver and conductor; that the bus was moving in normal speed but on a curve, the deceased carrying one weak arm, fell down after loosing balance; that there was no fault or negligence on the part of the driver; and yet if there be any liability, the amount be recovered from the insurer. The quantum of compensation claimed was also put to contention while

denying income and contribution of the deceased. It may be pointed out that in view of the stand taken by the insurer in its reply to the application for interim compensation, the non-applicant No. 4 Munir Khan, alleged to have obtained insurance coverage for the vehicle in question, was also impleaded as party to the claim application and he submitted a separate reply denying his liability with the averments that he got the vehicle insured at the asking of its owner Nekaram; and the insurance agent wrongly inserted his name care of Nekaram though he was not the owner of the vehicle. On the pleadings of the parties, the Tribunal framed the following issues: -

> "(1) क्या दिनांक 29-5-88 को ग्राम राजपुरा में मृतक पूनमाराम की मृत्यु बस सं. आर एन क्यू 486 के चालक उस्मानखां की लापरवाही व तेज गति से गाडी चलाने के कारण हुई है ?
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> (2) कि प्रार्थीगण अप्रार्थीगण सं. 1 से 4 संयुक्त रूप से या व्यक्तिगत रूप से रू. 400000/- पाने के अधिकारी है ?
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> (3) क्या अप्रार्थी नेकाराम या मुनीरखां विवादित बस का मालिक है और ऐसा है तो कौन मुआवजा अदा करने का उत्तरदायी नहीं है ?
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> (4) क्या पूनमाराम दुर्घटना के लिए स्वयं उत्तरदायी है ?
>
> (5) दादरसी ?"

In evidence, the claimants examined PW-1 Rambha (claimant No.1), PW-2 Okha Ram, the alleged passenger

boarding the bus at the place of incident Rajpura, PW-3 Gauri Shanker, the Education Extension Officer of Panchayat Samiti, Raniwada and PW-4 Gadu Ram, the then Head Constable at Police Station, Jaswantpura. The non-applicants examined DW-1 Narpat Chand, Branch Manager of the insurer at Jalore and DW-2, Asu Ram, an alleged eye witness to the incident. The claimants also produced relevant documentary evidence including last pay certificate of the deceased, Ex.2 and the insurer produced the insurance certificate, Ex.A/1.

After evidence of the parties, learned Judge of the Tribunal decided in issue No. 3 that the owner of the vehicle was Nekaram and it appeared that the insurance premium was deposited by Munir Khan; however, even if the name in the insurance coverage was stated that of Munir Khan care of Nekaram in case of any liability regarding the vehicle in question in the non-applicant Nos. 1 & 2, the insurer would remain correspondingly liable. Taking up issues Nos. 1 and 4 together, the learned Judge of the Tribunal held that falling of Punma Ram deceased from the bus was directly for the negligence and omission of care on the part of the driver and conductor of the bus and the non-applicants remain liable for compensation. It may also be pointed out that though no issues as such were framed, the learned Judge decided two more questions involved in the case; and held that delay in

filing the claim application deserves to be condoned and that the insurer has failed to establish limits of its liability by cogent evidence and shall remain liable for entire compensation alongside the non-applicants Nos. 1 & 2. These aspects need no further dilatation in this appeal by the claimants for enhancement, as the findings aforesaid have not been put to challenge by the non-applicants.

Taking up quantification of compensation, the learned Judge referred to the certificate Ex. 1 issued by Vikas Adhikari of Panchyat Samiti Raniwada stating the date of birth of the deceased at 01.08.1956; and his age stated in the injury report at 35 years and in post mortem report at 40 years. The learned Judge observed that the relevant documentary evidence in the form of Secondary School Certificate was not produced but considered it appropriate to estimate the age of deceased at about 35 years. The learned Judge accepted the income of the deceased at Rs.1,394/- per month as stated in his last pay certificate and deducting one-third on personal expenditure took the contribution to his dependents at Rs. 929/- per month; and then, with reference to uncertainties of life, some likely future grown in income, and the benefit derived by the claimants on receiving lump sum of compensation, considered it appropriate to put the average loss of contribution at Rs. 1,000/- per month, leading to a

multiplicand of Rs, 12,000/- per annum; and applying a multiplier of 15 assessed pecuniary loss at Rs.1,80,000/-. The learned Judge further found reasonable to allow Rs.10,000/- to the claimants towards non-pecuniary loss and arrived at a figure of Rs.1,90,000/- to be awarded as compensation and allowed interest at the rate of 12% per annum from the date of filing of claim application.

Assailing the award aforesaid learned counsel Mr. S. K. Sankhla appearing for the appellants has strenuously contended that the Tribunal has been seriously in error while quantifying compensation inasmuch as in the present case, where the deceased was in a settled job as teacher with regular prospects of increase in income, and was less than 33 years in age, the Tribunal ought to have provided for reasonable future prospects and ought to have applied the multiplier of 17. Learned counsel submitted that award remains grossly inadequate and deserves suitable enhancement. Learned counsel Mr. Jagdish Vyas appearing for the respondent-insurer has strenuously opposed the submissions made by the learned counsel for the appellants and submitted that the Tribunal has liberally assessed the amount of compensation for the claimants and there is no scope for enhancement.

Having given a thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is clearly of opinion that the impugned award being too low and grossly inadequate deserves suitable modification with upward revision of the quantum of compensation.

So far the age of the deceased is concerned, a certificate from his employer Ex.1 has been produced on record stating that his date of birth was 01.08.1956 as per the service record. The learned Judge of the Tribunal has declined to accept the same in proof of date of birth of the deceased with the observation that the Vikas Adhikari issuing the said certificate did not appear in witness-box; that the Secondary School Certificate was not produced; and that the concerned service record was also not produced. The approach of the learned Judge sounds too technical and the standard of proof called upon is not befitting the requirements of proof of such fact like age of the deceased in a vehicular accident case. The Extension Officer of Panchayat Samiti, PW-3 Gauri Shanker has proved the documents Ex.1, the date of birth certificate and so also Ex.2, the last pay certificate. There appears no reason for doubting the facts stated by Panchayat Samiti, Raniwada, the deceased was employed with. The injury report Ex.7 put his age as 35 years and the post mortem report Ex.9 at 40 years. The victim had admittedly fallen

unconscious as noticed in the injury report Ex.7 too; and died in that condition. Obviously, the age as stated in the injury report and the post mortem report were mere guesswork of the medical officers concerned. Be that as it may, for the purpose of assessment of compensation, suffice it to say that the age of the deceased ought to be put in the bracket of 30 to 35 years.

So far loss of contribution for the claimants is concerned, the deceased was in a settled job as teacher with Panchayat Samiti Raniwada and was in the age bracket of 30-35 years. It would be unrealistic to take his income and corresponding contribution to the claimants at the static figure of the income last drawn as such assessment on static figure of last drawn income would be falling too short of a fair estimate of loss. In view of comparatively younger age of the deceased it has been unjustified on the part of the Tribunal to estimate his income only at Rs.1,394/- per month and to take loss of contribution at Rs. 929/- per month and then to provide for a meager component towards future prospects to take average loss of contribution at Rs. 1,000/-per month only.

For the purpose of assessing just compensation in this case, a reasonable element of future growth in income of the deceased deserves to be provided in order to take suitable and appropriate average income and corresponding loss of

contribution. Even if enhancement only 1.5 times the last drawn salary is provided, average monthly income of the deceased stands at Rs.2,091/- and providing for one-third for his personal expenditure, a minimum average contribution of Rs.1,394/- deserves to be considered for the claimants leading to a multiplicand of Rs.16,728/- per annum. In the overall circumstances of the case, if the multiplicand is capitalized by a multiplier of 15 only, the pecuniary loss stands at Rs.2,50,920/- and the Tribunal has been entirely unjustified in restricting this amount only at Rs.1,80,000/-.

The wife, children and mother of the deceased deserve suitable compensation towards loss of consortium and loss of love, affection, guidance and services; and the Tribunal has not been justified in restricting this amount of non-pecuniary loss only at Rs.10,000/-. In the circumstances of the case, a sum of Rs.5000/- to each of the claimants deserves to be allowed. Therefore, the claimants are further entitled for Rs.25,000/- towards non-pecuniary loss. A further amount of Rs. 2,000/- deserves to be allowed towards funeral expenses.

The loss for the claimants, therefore, even on a conservative estimate stands at Rs.2,77,920/- (Rs.2,50,920/- + Rs.25,000/- + Rs.2,000/-) and the Tribunal has not been justified in restricting the award only in the sum of Rs.1,90,000/-. The claimant-appellants are, therefore, entitled

for further compensation in the sum of Rs. 87,920/- over and above the amount of Rs.1,90,000/- awarded by the Tribunal.

Having regard to the circumstances of the case and in view of the enhancement being made herein, it is considered appropriate that interest on the enhanced amount of compensation of Rs.87,920/- be allowed to the appellants at the rate of 6% per annum from the date of filing of the claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed; the impugned award is modified and the claimant-appellants are awarded compensation in the sum of Rs. 2,77,920/- in place of the amount of Rs. 1,90,000/- awarded by the Tribunal. The claimants shall, therefore, be entitled for a further amount of Rs.87,920/- and so also interest on the enhanced amount at the rate of 6% per annum from the date of filing of claim application.

The amount payable under the modified award shall be deposited by the respondent-insurer within 30 days from today with the Tribunal and the Tribunal shall make appropriate orders for apportionment and disbursement. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

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